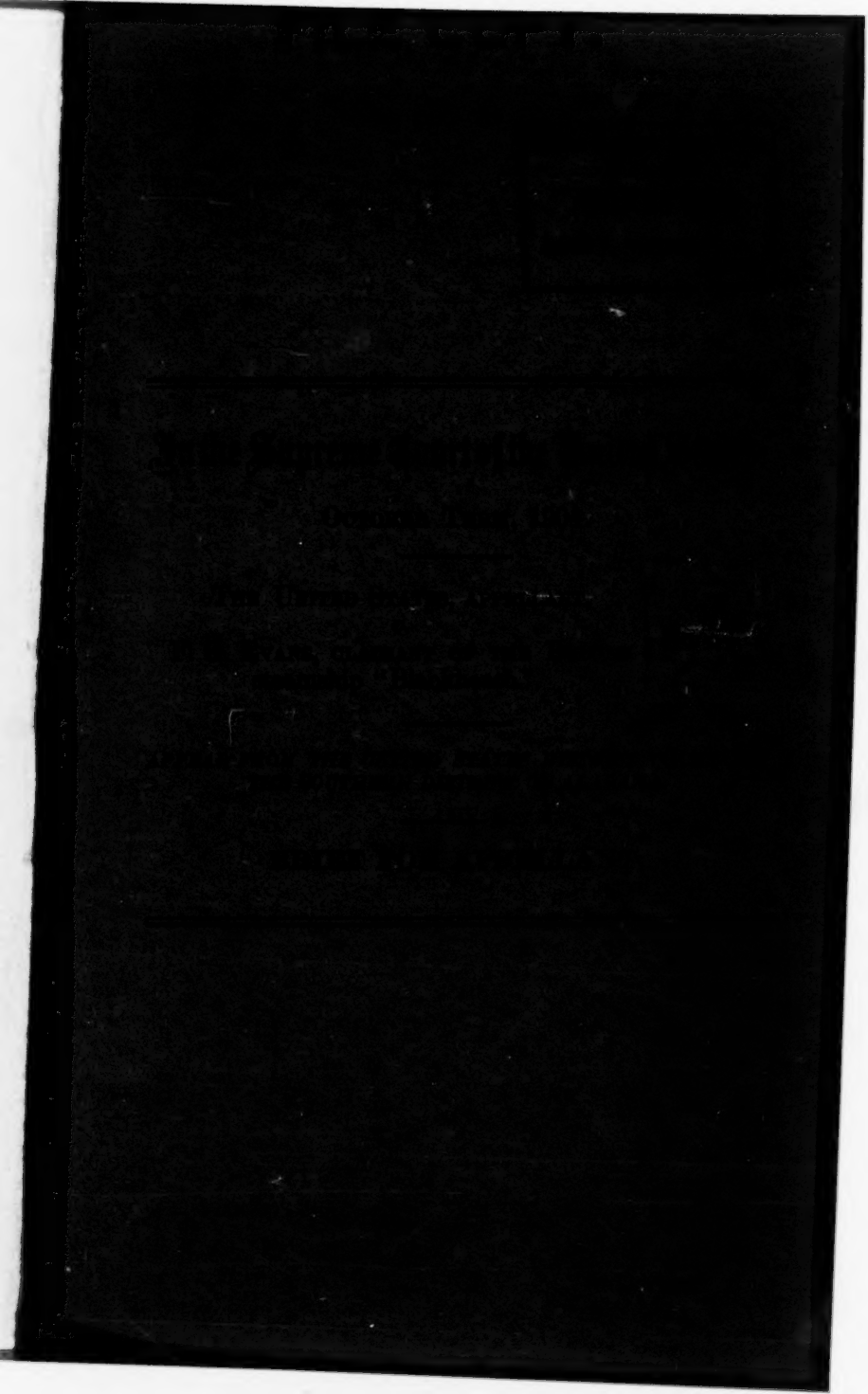

In the Supreme Court of the United States.

OCTOBER TERM, 1904.

THE UNITED STATES, APPELLANT,
v.
F. G. EVANS, CLAIMANT OF THE BRITISH steamship "Blackheath." } No. 34.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ALABAMA.

BRIEF FOR APPELLANT.

STATEMENT.

Whether the alleged injury was a maritime tort and within the jurisdiction of a court of admiralty is the sole question presented by this record.

In Mobile Bay the Government constructed and maintains a narrow ship channel along which vessels pass on their way from the open sea to the port. Adjacent to this channel, as aids to navigation, it also erected, owns, and sustains a system of lights.

While the British steamship *Blackheath* was being navigated from the ocean to Mobile, by reason of alleged negligence, it struck and destroyed beacon No. 7.

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A libel *in rem* against the vessel was filed in the district court to recover for the damage.

F. G. Evans, master of the ship, intervened, claimed possession, and answered in behalf of the owner. He admitted the collision and destruction of the beacon, but denied negligence and liability. In the answer he said (R., 6):

> Respondent does not know and can not answer as to the extent or pecuniary amount of damage to the beacon by the collision. So far as he could see *it was driven under water* and there was nothing he could do in the way of saving any part of it or of reducing the pecuniary damage sustained.

At the hearing a witness for libelant testified as to the situation, character, and construction of the structure on which the destroyed light was placed; and upon motion the court dismissed the libel for want of jurisdiction of the subject-matter (R., 7).

The court found and held (R., 7, 8):

> The question in this case is, Where was the injury sustained—on land or on water? The proof is that the structure injured in this case was a permanent one. It was not floating or susceptible of being floated. It was located 15 or 20 feet distant from the channel of the river or bay, about 2 miles south of the city of Mobile, in the midst of water 12 or 15 feet deep. It was constructed of piles driven into the soil at the bottom of the water to a depth of 12 or 13 feet, which piles were braced with iron bars above the top of the water. The piles extended

some distance above the water, on the top of which a platform of 2 by 12 inch planks was fastened. On this platform an iron framework was erected to the height of 15 or 20 feet, to which a beacon light was suspended. The structure was an immovable one—that is, not a floating structure or one susceptible of being floated. It was not on the water, but was below the surface of the water, resting well down in the soil at the bottom of the river and extending far above the top of the water.

I think that in legal contemplation it was land.

It seems to me clear, under the decisions, that the injury sued for is not a subject of admiralty jurisdiction.

The Government contends the tort was a maritime one, having been committed on navigable waters.

Appeal was taken directly to this court, the only question involved being one of jurisdiction.

ARGUMENT.

I.

The record shows that piles were driven into the bottom of the bay where the water was at least 12 feet deep, and that on these was set up the framework which supported the light. The structure had no connection with the shore, and its only purpose evidently was to support the beacon placed there solely in aid of navigation. By reason of negligence, want of skill, and improper conduct of the parties navigating the *Blackheath* it violently struck and completely demolished the piles, superstructure, and lens light. The

answer to the libel says, in reference to the destruction of the beacon, "It was driven under water and there was nothing he could do in the way of saving any part of it."

Was the alleged tort committed on land or water, as those words are understood in admiralty?

In *The Plymouth* (1865—3 Wall., 20), where damages were sought against a ship because fire negligently communicated from it destroyed a warehouse on the shore, this court decided that jurisdiction of torts in admiralty depends upon locality—that where the cause of action is completed on navigable waters admiralty has jurisdiction, but where it is completed on land the remedy belongs to the courts of common law. Mr. Justice Nelson, delivering the opinion, said (pp. 35, 36):

> The jurisdiction of the admiralty over maritime torts does not depend upon the wrong having been committed on board the vessel, but upon its having been committed upon the high seas or other navigable waters.
>
> A trespass on board of a vessel, or by the vessel itself, above tide water, when that was the limit of jurisdiction, was not of admiralty cognizance. The reason was, that it was not committed within the locality that gave the jurisdiction. * * *
>
> The jurisdiction of the admiralty does not depend upon the fact that the injury was inflicted by the vessel, but upon the locality—the high seas or navigable waters where it occurred. Every species of tort, however occurring, and

> whether on board a vessel or not, if upon the high seas or navigable waters, is of admiralty cognizance. * * *
>
> The whole, or at least the substantial cause of action, arising out of the wrong, must be complete within the locality upon which the juristion depends—on the high seas or navigable waters.

The Plymouth was cited and approved in *Ex parte Phœnix Insurance Company* (118 U. S., 618), *Johnson* v. *Chicago and Pacific Elevator Company* (119 U. S., 388), and *Homer Ramsdell Transportation Co.* v. *La Compagnie Générale Transatlantique* (182 U. S., 406, 411).

No doubt seems to have been suggested in any of the above cases that the tort was consummated on land.

In *The Rock Island Bridge* (1867—6 Wall., 213, 215)—a proceeding *in rem* against a bridge for damage to a ship—jurisdiction was denied. Mr. Justice Field, speaking for the court, said (pp. 215, 216):

> There is no doubt * * * that the jurisdiction of the admiralty extends to all cases of tort committed on the high seas, and in this country on navigable waters. For the redress of these torts the courts of admiralty may proceed *in personam*, and when the cause of the injury is the subject of a maritime lien may also proceed *in rem*. The latter proceeding is the remedy afforded for the enforcement of liens of that character. * * *
>
> The lien and the proceeding *in rem* are, therefore, correlative—where one exists the other can be taken, and not otherwise. * * *

> (P. 216.) A maritime lien can only exist upon movable things engaged in navigation, or upon things which are the subjects of commerce on the high seas or navigable waters. * * * But it can not arise upon anything which is fixed and immovable, like a wharf, a bridge, or real estate of any kind. Though bridges and wharves may aid commerce by facilitating intercourse on land or the discharge of cargoes they are not in any sense the subjects of maritime lien.

II.

This court has not attempted to give a general definition of what is land and what is water within the meaning of the admiralty law and the rule adopted in *The Plymouth.*

In *The Robert W. Parsons* (191 U. S., 17, 33) it was held that repairs to a ship in a dry dock were not made on land. Mr. Justice Brown, speaking for the court, said (p. 33):

> A further suggestion, however, is made that the contract in this case was not only made on land, but was to be performed on land, and was in fact performed on land. This argument must necessarily rest upon the assumption that repairs put upon a vessel while in dry dock are made upon land. We are unwilling to admit this proposition. A dock is an artificial basin in connection with a harbor, used for the reception of vessels in the taking on or discharging of their cargoes, and provided with gates for preventing the rise and fall of the waters occa-

sioned by the tides, and keeping a uniform level within the docks. A dry dock differs from an ordinary dock only in the fact that it is smaller, and provided with machinery for pumping out the water in order that the vessel may be repaired. All injuries suffered by the hulls of vessels below the water line, by collision or stranding, must necessarily be repaired in a dry dock, to prevent the inflow of water, but it has never been supposed, and it is believed the proposition is now for the first time made, that such repairs were made on land. Had the vessel been hauled up by ways upon the land and there repaired a different question might have been presented, as to which we express no opinion; but as all serious repairs upon the hulls of vessels are made in dry dock, the proposition that such repairs are made on land would practically deprive the admiralty courts of their largest and most important jurisdiction in connection with repairs. No authorities are cited to this proposition and it is believed none such exist.

I have not succeeded in finding any adjudicated case involving injury by a ship to a beacon set up in navigable waters. Bridges, piers, and wharves which pertain to the land are, in fact, mere extensions of the shore, and therefore torts to them are distinctly different from torts to structures lawfully within navigable waters, put there solely as aids to navigation. The question now raised was not decided in *The Plymouth* nor has it been in any case in this court of which I am aware.

Mr. Hughes, in his work on Admiralty, says (p. 183):

> The principle that wharves, bridges, and piers are parts of the shore applies to those which are attached directly or intermediately through others to the bank or shore line. But piles and structures attached to the bottom and surrounded by water are within navigable waters, and admiralty has jurisdiction of suits for injuries inflicted by them. On principle it ought also to have jurisdiction of suits for injuries received by them, as they can hardly be considered extensions of the shore.

In *The Arkansas* (1883—17 Fed. Rep., 383, district of Iowa) Judge Love, discussing what constitutes a maritime tort, in an *obiter dictum* said (p. 386):

> When is the locality or place where a tort is committed within admiralty cognizance, and when not? * * * Though highly desirable, it would no doubt be extremely difficult to lay down any general rule or criterion by which the jurisdiction could be tested in all cases. * * * The solution of the question of jurisdiction does not depend, in my judgment, upon the fact of the structure being solid or floating, realty or personalty, firmly affixed to the bed of the river or otherwise. It is a question of place, and of the rightfulness of the structure. Is the structure in the navigable bed of the river, and is it there by lawful authority, or not? If the structure is placed in the navigable bed of the river without rightful license or authority, and a vessel is injured by it, the party creating the obstruction may be sued for the injury in an

action *in personam* in a proper court of admiralty. This is manifest from the cases of *Atlee* v. *Packet Co.*, and *Railroad Co.* v. *Steam-tow Co.* (23 How., 209.)

The owners of the boat can not, of course, in such case proceed *in rem* against the solid structure, whatever it may be, whether a bridge, a pier, boom, or signal post, because there can be no maritime lien upon such a structure to be enforced in the admiralty by its seizure and sale. Such is the doctrine in the case of *The Rock Island Bridge* (6 Wall., 213).

But suppose, on the other hand, the structure whether bridge, boom, pier, or light-house, be a lawful one; suppose it to be placed in the navigable bed of the river by lawful authority, and suppose some reckless mariner should carelessly run his vessel upon it and injure it; can it be doubted that the tort thus committed would be within the admiralty jurisdiction? Can it be doubted that in such case the owner of the structure might proceed against the owners of the boat *in personam*, or against the boat itself *in rem*? The tort itself would be a marine tort; it would be, as to place, within the admiralty jurisdiction. The owner of the structure would have a right to proceed *in rem* against the boat, because, from its nature, a maritime lien could attach to the boat. The owner of the structure would, in this respect, have a certain advantage over the owner of the boat, since the latter, if injured, would be restricted to the remedy *in personam*. And this is exactly as it should be, since the boat is a moving,

transitory thing, and if no maritime lien attached to it, and no remedy existed in admiralty to enforce the lien, the boat might take its departure into distant States or foreign jurisdictions, leaving the owner of the structure without any effectual remedy. Indeed, the admiralty jurisdiction owes its existence chiefly to the fact that the common law tribunals, by reason of their modes of procedure, and their doctrine that possession is indispensable to a lien upon movables, are wholly inadequate to give relief against ships and vessels afloat upon the high seas and other navigable waters of the earth.

There is, therefore, good reason why the maritime lien and the admiralty jurisdiction should obtain in favor of the owner of a lawful structure injured by the negligent navigation of a colliding vessel. The common law could give him no adequate relief. But this reason does not apply reciprocally in favor of the owner of the vessel as against the solid structure, which can not move off and leave the owner of the vessel without remedy. Hence there is no necessity for establishing a lien upon such a structure, or enforcing the plaintiff's claim by a proceeding *in rem*. And since it is settled beyond question by *The Atlee* and *Tow-boat* cases that the owners of the boat would have a right to proceed *in personam*, in admiralty, against the owners of the structure, why should the reciprocal right of the owners of the structure to a remedy in admiralty against the boat be denied?

In *The Professor Morse* (1885—23 Fed. Rep., 803), Nixon, J., said in reference to the reasoning of the court

in *The Arkansas* touching the jurisdiction of admiralty in torts committed upon structures lawfully within navigable waters (p. 807):

> However much I might be inclined, if the question were an open one, to follow this *obiter dictum* of the learned judge, I am constrained by the authority of *The Plymouth* to hold in the present case that the libellants have mistaken their court. * * *

In *The F. & P. M. No. 2* (33 Fed. Rep., 511, 514), Dyer, J., said (p. 514):

> In the case of *The Arkansas* (17 Fed. Rep., 383) it was decided, in a well-considered opinion by Judge Love, that where a vessel is injured by collision with a structure unlawfully placed in the navigable channel of a river, the party creating the obstruction may be sued for the injury in an action *in personam*, in a proper court of admiralty; but the owners of the vessel can not, in such a case, proceed *in rem* against the solid structure, whatever it may be, because there can be no maritime lien upon such a structure, to be enforced in the admiralty by its seizure and sale. Further, that where a structure lawfully created in the navigable channel of a river is injured by collision caused by the negligent management of a vessel, the owner of such structure may proceed in an admiralty court, by action *in personam* against the owners of the vessel, or *in rem* against the vessel. If this be the law—and I have no doubt it is—no reason is perceived why the owner of a raft of logs which is in course of transit on navigable waters may not

proceed *in rem* against a boat or vessel which negligently runs into and destroys or injures the raft.

The City of Lincoln (1885—25 Fed. Rep., 835, district court southern district of New York, Brown, J.)

This was a libel against a wharfinger to recover damages done to steel blooms. Before they were removed the pier broke down and they were thrown into the water. Some were lost and others damaged. The tort was held to be maritime. The court said (p. 837):

> In this case the wharfinger's negligence was wholly upon the land, or in reference to a structure resting upon and built into the ground; but the injury to the libellant's steel blooms was effected wholly in the water, into which they were thrown through the breaking down of the wharf. The whole "substance and consummation of the injury" were, therefore, in the water. It was the water that did the damage. That was the place of the damage, and consequently the place of the tort, for the purposes of jurisdiction. Had the goods been, for instance, crockery or glassware, which were broken or otherwise injured through the breaking down of the wharf, but without being thrown into the water, the injury in that case would have been consummated upon the land, and no jurisdiction in admiralty would have attached. (*Rock Island Bridge*, 6 Wall., 213; *The Mary Stewart*, 10 Fed. Rep., 137; *The Accame*, 20 Fed. Rep., 642.) If the blooms in this case had not been thrown into the water, the injury in question would not have arisen. But as this injury was caused wholly by the water into

> which the blooms were thrown, if this arose through the wharfinger's negligence, such negligence was a marine tort, of which this court has jurisdiction.

III.

The lower Federal courts have decided a number of cases wherein they undertook to apply the rule laid down in *The Plymouth*. From them some are cited to illustrate the results.

The Neil Cochran (1872—Brown's Admiralty, 164, 165, Fed. Cases, 7996 and 10087. Sherman, D. J.).

A vessel ran into an iron swing bridge erected across the Cuyahoga River and injured it. Held, admiralty had no jurisdiction. "The origin of the wrong was upon navigable water, but the whole damage resulting therefrom was done upon the land, the bridge being attached to and a part of the land."

The Ottawa (1872—eastern district of Michigan. Brown's Admiralty, 356; Fed. Cases, 10616).

This was a libel *in rem* to recover for damages inflicted upon a wharf extending from the shore by collision with the propeller *Ottawa*. It was dismissed for want of jurisdiction. The court said:

> Upon a careful consideration of the question, and of the authorities bearing upon it, I must hold that a wharf is but an improvement or extension of the shore; that it is real estate, and that an injury done to it, whether through negligence or design, no matter by what agency, is an injury done wholly on land and not on the water, and therefore does not constitute a marine tort.

The Maud Webster (1876 and 1877—8 Ben. 552; Fed. Cases 9302. Blatchford, D. J.).

A libel to recover for damages sustained in consequence of the schooner's having come in contact with a derrick used in constructing a pier. The evidence showed the damaged derrick was not afloat, did not rest upon any floating support or upon any boat or vessel or raft which at any time floated, and was not anchored, but was sustained against the force of gravity wholly by direct pressure upon the soil of the earth. The court held, upon the authority of *The Plymouth*, *The Neil Cochran*, and *The Ottawa*, that the tort was not maritime, the locality of the thing injured was not upon the water, and that admiralty had no jurisdiction, saying:

> The property was not in use for purposes of navigation, and was none of it afloat, and was all of it supported by direct pressure on the soil of the earth. It was no more upon the water, and the injury to it did not any more happen on the water than did the injury to the wharf in the case of *The Plymouth*.

The Mary Stewart (1881—10 Fed. Rep., 137).

Injury was done to libelant while standing on a wharf by a bale of cotton which, while being hoisted on board, fell before it reached the ship's rail and struck him. The libel was dismissed upon the ground that the injury happened on the land.

The Professor Morse (1885—23 Fed. Rep., 803. District of New York. Nixon, J.).

Libel for tort to marine railway extending from the

shore under the water. Dismissed for want of jurisdiction, the court holding that the railway was not a floating structure and the tort, therefore, not within admiralty jurisdiction.

City of Milwaukee v. *Curtis* (1889—37 Fed. Rep., 705. Eastern district of Wisconsin. Jenkins, J.).

Injury was inflicted by a vessel upon a bridge. The libel was dismissed for want of jurisdiction. The court held:

> Bridges are merely prolongations over waters of highways upon land. They are not afloat. Like wharves and piers they are connected with the shore. * * * They concern commerce upon land, not upon the sea. Within the intendment of the maritime law they are—equally with wharves and piers—structures upon or connected with the shore. They pertain to the land, not to the sea; and so are without the cognizance of the admiralty jurisdiction. An injury thereto can not be said to have occurred upon the water.

The H. S. Pickands (1890—42 Fed. Rep., 239, 240, district of Michigan. Brown, J.).

Libel *in rem* for injuries received by a workman who, when attempting to descend from the vessel by means of a ladder extending therefrom, was thrown to the dock and injured. The court held admiralty had no jurisdiction and said (p. 240):

> It has never been doubted since the case of *The Plymouth* (3 Wall., 20), that to enable us to take cognizance of a maritime tort the injury must have been consummated and the damage

> received upon the water. The mere fact that the wrongful act was done upon the ship is insufficient. Subsequent adjudications have in nowise tended to limit or qualify this rule.

The Mary Garrett (63 Fed. Rep., 1011, 1013).

Libel *in rem* to recover damages for personal injuries to seaman employed on a vessel caused by negligence in unloading freight which was discharged and fell upon him while on the wharf. The court dismissed the libel on the ground that the injury was received on land.

The Strabo (1898—90 Fed. Rep., 110. District court, eastern district of New York. Thomas, D. J.).

Libelant, employed in loading a ship, attempted to leave it by means of a ladder which, by reason of the master's negligence, was not secured to the rail. The ladder fell and he was thrown on the dock and injured. Held, that the case was within admiralty jurisdiction. This is an instructive opinion, citing many authorities. The court said (p. 111):

> All cases for ultimate authority refer to *The Plymouth* (3 Wall., 20).
>
> (P. 113.) If a ship carpenter were employed to mend a yard on a vessel lying at a dock, and, by the master's negligence, he were caused to fall, and he should fall upon the vessel or in the water, would this court have jurisdiction; but if he should strike on the dock, would this court be without jurisdiction? If a passenger, standing at the gangway for the purpose of alighting, were disturbed by some negligent act of the master, would the jurisdiction of this court

depend upon the fact whether he fell on the deck and remained there or whether he was precipitated upon the dock in the first instance or finally landed there after first falling on some part of the ship? If a seaman by the master's neglect should fall overboard, would this court entertain jurisdiction if the seaman fell in the water and decline jurisdiction if he fell on the dock or other land? The inception of a cause of action is not usually defined by such a rule.

Leathers v. *Blessing* (105 U. S., 626).

Rundell v. *La Compagnie Générale Transatlantique* (C. C. A., 1900—100 Fed. Rep., 655).

Dailey v. *City of New York* (128 Fed. Rep., 799).

De Lovio v. *Boit* (1815—2 Gall., 398; Fed. Cases, 3776).

See also 6 Rose's Notes, pages 459, 460, for a collection of authorities in which *The Plymouth* is cited.

IV.

The origin, nature, and jurisdiction of admiralty courts are exhaustively discussed in various opinions of this court. They demonstrate a well-defined purpose to construe liberally the terms "all cases of admiralty and maritime jurisdiction" and to ascertain its boundary "by a reasonable and just construction of the words used in the Constitution, taken in connection with the whole instrument and the purposes for which admiralty and maritime jurisdiction were granted to the Federal Government." (*The Steamer St. Lawrence*, 1 Black., 522–527.)

In *Insurance Company* v. *Dunham* (11 Wall., 1, 22), Mr. Justice Bradley, delivering the opinion, pointed out the origin of admiralty courts, reviewed the history of the holdings of this court touching their jurisdiction, and in a lucid way showed how it has been extended to meet the enlarged requirements necessitated by the progress of events and the growth of the country. He said (p. 23):

> The admiralty courts were originally established in that [England] and other maritime countries of Europe for the protection of commerce and the administration of that venerable law of the sea which reaches back to sources long anterior even to those of the civil law itself; which Lord Mansfield says is not the law of any particular country, but the general law of nations; and which is founded on the broadest principles of equity and justice, deriving, however, much of its completeness and symmetry, as well as its modes of proceeding, from the civil law, and embracing, altogether, a system of regulations embodied and matured by the combined efforts of the most enlightened commercial nations of the world.
>
> (P. 24.) This court has frequently declared and decided that the admiralty and maritime jurisdiction of the United States is not limited either by the restraining statutes or the judicial prohibitions of England, but is to be interpreted by a more enlarged view of its essential nature and objects, and with reference to analogous jurisdic-

> tions in other countries constituting the maritime commercial world, as well as to that of England.
>
> (P. 25.) In accordance with this more enlarged view of the subject, several results have been arrived at widely differing from the long-established rules of the English courts.
>
> (P. 26.) As to contracts it has been equally well settled that the English rule which concedes jurisdiction, with a few exceptions, only to contracts made upon the sea and to be executed thereon (making *locality* the test) is entirely inadmissible, and that the true criterion is the nature and subject-matter of the contract, as whether it was a maritime contract having reference to maritime service or maritime transactions.

In *Waring et al.* v. *Clarke* (1847—5 How., 440, 450), in an exhaustive opinion Mr. Justice Wayne, after reviewing the limitations and tests of admiralty jurisdiction conferred upon courts of the United States, distinctly repudiated the doctrine of the English court, that it does not include a tort occurring within the body of any county, saying (p. 463):

> Our conclusion is, that the admiralty jurisdiction of the courts of the United States extends to tide waters, as far as the tide flows, though that may be *infra corpus comitatus*.

In *The Genesee Chief* (1851—12 How., 443), Chief Justice Taney discussed the powers of the admiralty courts of the United States, repudiated the English doctrine confining their jurisdiction to the ebb and flow of the tide and held that it extended to all public navigable waters on which commerce may be carried

on between different States or nations. Among other things he said (p. 453):

> Courts of admiralty have been found necessary in all commercial countries, not only for the safety and convenience of commerce, and the speedy decision of controversies, where delay would often be ruin, but also to administer the laws of nations in a season of war.
>
> (P. 454.) There is certainly nothing in the ebb and flow of the tide that makes the waters peculiarly suitable for admiralty jurisdiction, nor anything in the absence of a tide that renders it unfit. If it is a public navigable water on which commerce is carried on between different States or nations, the reason for the jurisdiction is precisely the same. And if a distinction is made on that account, it is merely arbitrary, without any foundation in reason, and, indeed, would seem to be inconsistent with it.
>
> (P. 457.) Certainly there can be no reason for admiralty power over a public tide water which does not apply with equal force to any other public water used for commercial purposes and foreign trade.
>
> (P. 459.) The principal objection made to the admiralty jurisdiction is the want of trial by jury. * * * But experience in England has proved that a wider range of jurisdiction was necessary for the benefit of commerce and navigation; and that they needed courts acting more promptly than courts of common law, and not entangled with the niceties and strictness of common-law pleadings and proceedings.

In *Ex parte Easton* (95 U. S., 68) this court held, in an opinion by Mr. Justice Clifford, that claims for wharfage are cognizable in admiralty. He said (p. 75):

> Standard authorities, as well as reason, principle, and the necessities of commerce, support the theory that the contract for wharfage is a maritime contract, which, in the case supposed, gives to the proprietor of the wharf a maritime lien on the ship or vessel for his security.

The commission of a vice-admiralty judge in the Colonies, granted by the King, gave him cognizance of all cases, civil and maritime, "which do any ways concern suits, trespasses, injuries, extortions, demands, and affairs, civil and maritime, whatsoever, between merchants or between owners and proprietors of ships, or other vessels, and merchants, or other persons whomsoever, with such owners and proprietors of ships or other vessels whatsoever, employed or used, or between any other persons howsoever had, made, began, or contracted for any matter, cause, or thing, business, or injury whatsoever, done or to be done as well in, upon, or by the sea, or public streams, or fresh waters, ports, rivers, creeks, and places overflowed whatsoever, within the ebbing and flowing of the sea, or high-water mark, as upon any of the shores, or banks adjoining to them or either of them, together with all and singular, their incidents, emergencies, dependencies annexed and connexed causes whatsoever." (Benedict, Adm., sec. 151.)

"These general words are of the most comprehensive character, and include all matters which are in their

nature maritime, while all those causes of which jurisdiction has been denied to the English admiralty, are especially enumerated as admiralty and maritime causes." (Id., section 161.)

"If we examine the etymology, or received use of the words *admiralty* and *maritime jurisdiction*, we shall find that they include the judicial jurisdiction of the admiral and of all maritime causes, or causes arising from things done upon and relating to the sea; or, in other words, all transactions and proceedings relative to commerce and navigation, and to damages or injuries upon the sea, or navigable waters of the nation, or upon the high sea." (Id., section 191.)

Crosse v. *Diggs*, in the King's Bench, Michelmas term, 15 Charles II, Siderfin, page 158.

"Fuit move pur Prohibition al Admiralty, Quia suit fuit la pur profits del Beaconage dun Rock in le Mere proper * * * in Cornwall, Et fuit dit que come le profits des Beacans appent al Admiral issint le suite pur eux doet estre en son Court que est le Admiralty & ceo coment le Rock soit parceil del Terre & Freehold dun auter cibien que Hospitalls, etc., sont visitables per Levesque coment sont Temporal Inheritances & 4 Inst. l. a. Beaconage fuit cite & de cel opinion fueront tout le Court & uncore ils dionts que le Beacon mesme poit etre l inheritence d'ascun private person & impleadable in les Courts del Roy."

Cokes Institutes, part 4, pages 148, 149—Beacons, Lights of the sea, Light-houses, and Sea marks.

"Before the reign of Edward III they (beacons) were but stacks of wood set upon high places which were fired when the coming of enemies were descried, but in his own reign pitch boxes as now they be, were instead of those stacks of wood set up, and this properly is a beacon * * *."

"At the common law none but the King could erect any of these three (beacons, light-houses, and sea marks), whichever was done by the King's commission under the great seal as taking some few examples of many. But of latter times by the letters patents granted to the lord admiral he hath power to erect beacons, sea marks, and signs for the sea."

The admiralty court act of 1861 (24 Victoria, c. 10) enacts that the court of admiralty shall have jurisdiction over any claim for damage done by any ship. (Williams and Bruce Admiralty Jurisdiction, 3d ed., p. 73.)

The jurisdiction of the French Admiralty has always been of the widest and most salutary character.

The ordinance, among other things, provides:

> They shall likewise take cognizance of damages done by ships to the fisheries, either upon the coasts or in navigable rivers, and of those that the ships shall receive, and likewise of the ways appointed for hauling up ships coming from the sea, if there be no regulation, title, or possession to the contrary.
>
> They shall also take cognizance of the damages done to the keys, banks, moles, palisadoes,

and other works cast up, against the violence of the sea, and shall take care that the depth of the ports and roads be preserved and kept clean. (Benedict's Amiralty, secs. 172, 175.)

V.

The answer of respondent distinctly states that the beacon, when struck by the ship, *was driven under the water*. As in *The City of Lincoln* (*supra*), the whole substance and consummation of the injury may, therefore, be said to have been in the water. That was the place where the damage was done and, consequently, the locus of the tort.

If the destroyed light had rested upon a floating buoy, securely chained to piles driven into the bottom of the bay, there can be no doubt that the damage inflicted would have been cognizable in admiralty, in any view of the case. Does the fact that the light rested upon the top of piles, entirely surrounded by navigable water instead of upon a buoy chained thereto, deprive the admiralty court of power to redress the wrong?

I respectfully submit that there is no tenable distinction between the two cases, and that every reason of policy or principle which would give to the admiralty court jurisdiction in the former case applies in the latter.

The beacon was in no proper sense land, nor any part thereof. It was not connected with the shore, and was not erected for any purpose pertaining to

the land. The sole object of its existence was in aid of navigation upon the water, and it will be in the interest of this if the alleged wrong is held to be cognizable in a court of admiralty. Lights are highly important adjuncts to navigation, and their safety will be better secured by the speedy processes of admiralty courts than by the actions *in personam* in a court of law.

In *The Gas Float Whitton*, No. 2, Law Reports Appeal Cases (1897), pages 337, 349, where it was held that a float used in connection with a harbor light was not the subject of salvage, Lord Macnaghten, replying to the argument that it was in the interest of navigation and commerce that beacons, valuable in themselves and for their utility, should be preserved, and that to adjudge them properly subject to salvage claims would tend to effect that end, said: "There would be much force in the appellants' argument if it were clear that the proposed extension of the doctrine of salvage would conduce to the preservation of beacons."

It seems clear from the decision of this court in *The Robert W. Parsons*, holding a dry dock is not land within the meaning of admiralty law, that no mere technical distinction of the common law will be permitted to deprive admiralty courts of jurisdiction over those subjects which the reason for their existence and the nature of their powers demand they should have. No stronger reason appears for holding a beacon constructed upon piles in the midst of navigable waters is land than for holding a dry dock constructed upon the shore is land.

It has been found necessary in England to extend admiralty jurisdiction to all claims for damage inflicted by a ship, whether consummated on land or water, and it would seem wise policy for our admiralty courts to exercise, as near as may be, the same powers.

There is reason to think that under the ancient law of England the destruction of a beacon maintained by the Admiral in the open sea would have been cognizable in his court and that the vice-admiral in colonial times would have granted relief for an injury by a ship to a light in navigable waters, erected and maintained by the Crown. There is nothing in the opinions of this court which adjudges such a cause without "admiralty and maritime jurisdiction." This has heretofore been liberally extended to meet the demands of the country and to carry out the wise purposes for which it was originally instituted, all of which, I submit, require that it should include the present controversy.

If in admiralty there is no adequate remedy for injuries to harbor and channel lights by foreign ships, the Government is without power to properly protect and preserve these highly important adjuncts to commerce and navigation.

I RESPECTFULLY ASK THAT THE DECREE OF THE COURT BELOW BE REVERSED.

J. C. McREYNOLDS,
Assistant Attorney-General

OCTOBER, 1904.

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